83-691

No.

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In the Supreme Court

OF THE

United States

OCTOBER TERM 1983

NADA NOVAKOVICH ALUEVICH,
Petitioner,

vs.

HARRAH'S, a Nevada corporation; HARRAH'S CLUB, a Nevada corporation; Holiday Inns, Inc., a Tennessee corporation; L. Mead Dixon; Lloyd Dyer; Romano Andreotti, Maurice Sheppard; Bob Contois; George Poore; Arthur Smith,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

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QUESTIONS PRESENTED

1. Does the decision of the Nevada Supreme Court Excluding Commercial Business Lessees from the Protection of the Covenant of Good Faith and Fair Dealing Constitute an Invidious and Arbitrary Classification In Violation of the Fourteenth Amendment Mandate Prohibiting a Denial of Equal Protection of the Laws?

2. Does the Decision of the Nevada Supreme Court Withdrawing the Obligation of Good Faith and Fair Dealing From Commercial Business Leases Constitute an Unconstitutional Judicial Interference With the Obligation of Contracts in Violation of the Fourteenth Amendment Guarantee of Due Process of Law?

LIST OF PARTIES

Petitioner herein, Nada Novakovich Aluevich, was the Appellant in the Supreme Court of Nevada, and the Plaintiff in the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

Respondents herein were the Respondents in the Supreme Court of Nevada and the Defendants in the Second Judicial District Court of the Sate of Nevada in and for the County of Washoe. The individual Respondents were officers, directors and employees of the corporate Respondents.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

OPINION BELOW

The Trial Court, at the conclusion of a jury trial on Plaintiff's Complaint against the Defendants arising from the alleged improper and wrongful termination of a commercial business lease, granted the motion of the Respondents for a directed verdict dismissing Petitioner's claim for tortious breach of an implied duty of good faith and fair dealing. The Nevada Supreme Court affirmed such directed verdict in its decision filed and entered on March 31, 1983, which is reported in the Official Reports, 99 Nev. ....., Adv. Op. No. 660 P.2d 986 (1983), and is reprinted herein in the

Appendix. A timely Petition for Rehearing was denied without opinion by Order filed and entered July 29, 1983, and the decision became final by the issuance of the Remittitur to the Trial Court on August 8, 1983. Copies of the Petition for Rehearing, Order Denying Rehearing and the Remittitur are reprinted herein in the Appendix.

JURISDICTION

The decision of the Nevada Supreme Court of which review by certiorari is sought herein was made and entered on March 31, 1983 and became final by the denial of a petition for rehearing and the issuance of the Remittitur on August 8, 1983. The jurisdiction of this Court is invoked under Title 28 U.S.C. § 1257(c).

RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES

ARTICLE I, Section 10 of the United States Constitution:

"No State shall . . . pass any . . . Law impairing the Obligation of contracts, . . .

AMENDMENT FOURTEEN, United States Constitution:

> "Section 1. "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

N.R.S. 104.2104(1):

"1. 'Merchant' means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill."

N.R.S. 104.1201(19):

"19. 'Good faith' means honesty in fact in the conduct or transaction concerned.

N.R.S. 104.1203:

"Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement"

N.R.S. 104.2103(1)(b):

"(b) 'Good faith' in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade."

N.R.S. 104.1102(3):

"3. The effect of provisions of this chapter may be varied by agreement, except as otherwise provided in this chapter and except that the obligations of good faith, diligence, reasonableness and care prescribed by this chapter may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable."

N.R.S. 104.1208:

"A term providing that one party or his successor in interest may accelerate payment or performance or

require collateral or additional collateral 'at will' or 'when he deems himself insecure' or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised."

STATEMENT OF THE CASE

Petitioner, Nada Novakovich Aluevich, is a Reno attorney who, from 1968 to 1978, successfully operated Luke's Gift Shoppe and Luke's Nevada Photo Service at the northwest corner of Second and Virginia Streets on the ground floor of the Byington Building under a succession of leases from the Respondent, Harrah's Club, with net profits in 1976 of $301,000.00, and 1977 of $310,000.00. All of the leases prior to 1978 provided for a flat monthly rental fee to be paid by the Petitioner. On June 30, 1977, Petitioner notified Harrah's of her intention to renew the lease. During the lease renewal negotiations the Respondent revealed that it was considering the operation of its own gift shop business on the Petitioner's business premises, and requested confidential, gross income, and sales volume data which Petitioner adamantly refused to give. As a result, the Respondent proposed altering the rental agreement of the prior leases to provide for a percentage lease, which arrangement would necessarily require Petitioner to disclose gross income and sales volume information. Given no real choice in the matter, the Petitioner agreed to renew the lease on a percentage rental basis, but requested the deletion of a provision permitting Harrah's to terminate the lease on a unilateral 90-days notice, which provision had been in the

prior leases. She was assured by Respondent that the provision was non-negotiable and would have to remain in the lease, but that it would only be exercised if Harrah's could put unlimited gaming on the premises, or if she permitted the premises to become cluttered and unkempt. In reliance upon these assurances, the Petitioner reluctantly acceded to the terms of the lease that Harrah's insisted upon, and the lease was renewed upon the expiration of the prior lease in February of 1978. Thereafter, unknown at that time to Petitioner, Harrah's continued to pursue the feasibility of operating its own gift shop at the Petitioner's location, thereby "taking over" the Petitioner's successful, lucrative business operation, and made written projections estimating their "profit potential" from operating Luke's Gift Shoppe as a Harrah's entity, with recommendation that Harrah's "take over this operation," and determined that if it took over Petitioner's business it would show a before tax profit of $800,000. Harrah's personnel admitted that the Petitioner ran a good store and was a good tenant. Seven months after the renewal of the lease and the disclosure of the financial and operational data to Harrah's by Petitioner, Respondent gave Petitioner a notice to terminate, invoking the unilateral 90-day termination clause. Petitioner ultimately vacated the premises pursuant to the notice and a 30-day extension thereof. After Petitioner vacated the premises, Harrah's opened its own gift shop on the premises. Petitioner brought an action against the Respondents for wrongful termination of her lease agreement, alleging a cause of action for damage, inter alia, for breach of the covenant of good faith and fair dealing. At the trial of the action before a jury, the Trial Court granted

a directed verdict in favor of Respondents and would not let the jury consider the claim for breach of the covenant of good faith and fair dealing.

Petitioner appealed the granting of the directed verdict to the Nevada Supreme Court which rendered its Decision (Appendix A) holding that although the claim arising from the breach of the covenant of good faith and fair dealing was recognized in Nevada, the fact that Appellant was a successful and sophisticated businessperson and attorney in the relationship of lessee to a commercial lessor obviated the "special element of reliance" and therefore the cause of action was not available. In essence, the Court held that a commercial business lessor dealing with a sophisticated businessperson was immune from liability for bad faith. The dissenting opinion, authored by Mr. Justice Springer, pointed out that there was no reason to restrict the cause of action in the manner suggested by the majority, pointing out that the Court had previously recognized that the duty of good faith and fair dealing exists in *every* contract, and had previously been applied by the Court to the enforcement of a warehouse lien in *Mitchell v. Bailey & Selover*, 96 Nev. 147, 605 P.2d 1138 (1980).

The Petitioner filed a Petition for Rehearing in the Nevada Supreme Court, pointing out therein that its Decision created an arbitrary immunity for a certain class of business persons, which classification did not serve a reasonable purpose and was invidious and unreasonable. The Petition pointed out that the covenant of good faith and fair dealing had been legislatively endorsed by the Nevada Legislature in the adoption of the Uniform Commercial Code,

and legislatively had been extended to every type of business relationship between sophisticated business people that is encompassed within the provisions of the Code, including lessees, where the leases could be deemed to be security devices. In fact, the Petitioner pointed out, the Legislature had deemed such duty so important and so integral a part of such business relationships that it legislatively precluded the parties to such relationships to bargain it away. (N.R.S. 104.1102(3)). In addition, the Court had judicially recognized and enforced such duty in non-Commercial Code situations, recognizing that the duty existed in every contract. As a result, the Petition for Rehearing contended, the exclusion of commercial business lessors from liability for breach of such duty operated as an unreasonable classification which denied to the Petitioner the equal protection of the laws guaranteed to her by the Fourteenth Amendment to the United States Constitution. The Petition for Rehearing further contended that the fact that the parties were sophisticated and knowledgable business people was precisely the reason why they would have entered into the contract in reliance upon the good faith of each other, and why the Petitioner would accept the assurances of the Respondent as to the limited purposes for which the unilateral 90-day termination clause would be exercised, and that the Supreme Court's decision impaired the obligation of that contract, which, within the contemplation of the parties, included the obligation of good faith and fair dealing.

The Nevada Supreme Court denied the Petition for Rehearing without opinion on July 29, 1983, and issued its Remittitur on August 8, 1983.

STAGES AT WHICH THE FEDERAL QUESTIONS WERE RAISED AND PRESERVED

The federal questions in this case arise from the withdrawal of the covenant of good faith and fair dealing from the contractual relationships between the parties. The withdrawal of the claim was first raised at the trial level when the Trial Court withdrew the cause of action based on such obligation from the consideration of the jury by a directed verdict. The existence of such obligation as an incident of the contractual relationship of the parties was raised and argued in the direct appeal to the Nevada Supreme Court. The Nevada Supreme Court's decision held that it was proper to withdraw such obligation from the parties contract based on a judicial classification that parties who are sophisticated and knowledgable business people are not entitled to rely upon the good faith and fair dealing of the persons with whom they contract, and therefore such persons with whom they contract are immune from liability for breach of the obligation of good faith and fair dealing. The Petitioner challenged this classification as in violation of the Equal Protection Clause and the Due Process of Law Clause by reason of the violation of Article I, Section 10 of the United States Constitution by Petition for Rehearing.

ARGUMENT

I

CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER THE DECISION OF THE NEVADA SUPREME COURT VIOLATED THE MANDATE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BY DENYING TO THE PETITIONER THE EQUAL PROTECTION OF THE LAWS

Petitioner, in her case against Respondent, sought to invoke the law of the State of Nevada granting a cause of action to a contracting party who suffers injury and damages by reason of the bad faith of the other contracting party in acting to defeat the purposes of the contract. This law is based upon the determination that implicit in *every* contract is an implied covenant of good faith and fair dealing, the breach of which is a tort which gives rise to a liability for consequential damages caused by such breach, and, in appropriate cases, punitive damages. (*Communale v. Traders & Gen. Ins. Co.*, 328 P.2d 198, 200 (Cal. 1958); *Gruenberg v. Aetna Ins. Co.*, 510 P.2d 1032, 1036 (Cal. 1975), adopted for the State of Nevada in *U.S. Fidelity v. Peterson*, 91 Nev. 617, 540 P.2d 1070 (1975)).

The Nevada Supreme Court, in denying the availability of a cause of action for breach of the covenant of good faith and fair dealing to Petitioner, in a case where there is no contention that the Petitioner did not establish a *prima facie* case entitling her to relief on such cause of action, held that because the Petitioner was a sophisticated and knowledgable business person, her case lacked that "special element of reliance" implicit in such cause of

action. It is respectfully submitted that in so holding, the Nevada Supreme Court has judicially carved out an immunity from liability for that class of contracting parties who enter into commercial business lease contracts with sophisticated lessees, and that there is no reasonable basis for such classification under the law of the State of Nevada. The fact that a contracting party is sophisticated and knowledgable is not a reasonable basis for denying that person the benefit of the covenant of good faith and fair dealing. The Nevada Legislature so recognized in its enactment of the Uniform Commercial Code, where the policy that sophisticated, knowledgable business people, with experience and skill in commercial transactions, should be bound to and entitled to rely upon the legal duty of good faith and fair dealing, with each other as well as with others. "Merchants" are defined in the Code as persons having such qualities of knowledge, experience and skill (N.R.S. 104.2104), and the Code specifically provides that, in the case of a "merchant", good faith means honesty in fact and the observance of reasonable commercial standards of fair dealing. (N.R.S. 104.2103(1)(b)). The Code further provides that the obligation of "good faith", defined as honesty in fact, may not be bargained away by anyone, including sophisticated, knowledgable and experienced business people. (N.R.S. 104.1102(3)). And with a contract such as that herein involved, which provides one of the parties a right exercisable "at will", the Code provides such right may only be exercised in "good faith", and that the party exercising such right has the burden of proving such good faith. (N.R.S. 104.1208). Therefore, under the Uniform Commercial Code in Nevada, every contract or transaction between persons, whether sophisti-

cated, knowledgable and experienced, or not, which involves the sale of goods (N.R.S. 104.2101 et seq.), involves commercial paper (N.R.S. 104.3101 et seq.), involves bank deposits and collections (N.R.S. 104.4101 et seq.), involves letters of credit (N.R.S. 104.5101 et seq.) which involves bulk transfers (N.R.S. 104.6101 et seq.), involves warehouse receipts, bills of lading and documents of title (N.R.S. 104.7101 et seq.), involves investment securities (N.R.S. 104.8101 et seq.) and which involves secured transactions (N.R.S. 104.9101 et seq.) unconditionally contains within it an implied covenant of good faith, imposed by law and made non-waivable. Thus, the fact that a contracting party is sophisticated, knowledgable or experienced is not a reasonable basis for withholding the protection of such covenant from that party when the party enters into a contractual relationship.

On the same day the Nevada Supreme Court decided Petitioner's case, it also rendered its Decision in *State Farm Fire & Casualty Company v. All Electric, Inc.*, 99 Nev. ....., Adv. Op. No. 49, 660 P.2d 995 (1983) in which it held as unconstitutional, in violation of the Fourteenth Amendment's mandate commanding that all citizens are entitled to the Equal Protection of the law, a statutory provision limiting liability for design and construction defects to a period of six years after completion of construction (regardless of when the cause of action accrued), which also denied the protection of such immunity from liability to owners and occupiers of the premises and material suppliers. The Court therein recognized that classification must be reasonable, citing *Morey v. Doud*, 354 U.S. 457 (1957), and that where the classification was not suspect on its face and did not involve a fundamental

right (such as classifications based on race, creed, or involving rights of liberty), the role of the Court is to determine whether the classification bears a rational relationship to the legislative purpose sought to be effected, citing *Dandridge v. Williams*, 397 U.S. 471 (1970)). The Court, relying on the reasoning of precedents from other jurisdictions, determined that the classification was unreasonable because there was no rational basis for granting an immunity to the designer, contractor, architect and engineer which was not granted to the materialman and the owner or occupier. In so holding, the Nevada Court acknowledged the confusion among the states as to the effect of the action taken by this Court in dismissing the appeal in *Carter v. Hartenstein*, 455 S.W.2d 918 (Ark. 1970) for want of a substantial federal question, which appeal involved a challenge on equal protection grounds to a similar statute. The Nevada Supreme Court therein pointed out, in footnote 2:

> "The statute in *Carter* was similar to that in issue in the immediate case and the equal protection challenge was similar as well. The Arkansas Supreme Court upheld the validity of the statute and appeal was taken to the United States Supreme Court. There, the appeal was dismissed for lack of a substantial federal question. While such a dismissal has limited precedential value, the dismissal is generally a binding adjudication of the merits. Hicks v. Miranda, 422 U.S. 332 (1975). Nevertheless, at least six jurisdictions have held similar statutes to be unconstitutional since the *Carter* dismissal in 1971. Obviously, those jurisdictions do not believe the summary disposition in *Carter* is binding. We agree. Although *Carter* may be very persuasive, we do not believe it is dispositive of this appeal. See Justice Brennan's concurrence in Mandel v.

> Bradley, 432 U.S. 173 (1977), (state courts should give appropriate but not conclusive weight to summary dispositions)."

The Court also pointed out in footnote 3 that other states have held such statutes to be unconstitutional, although on grounds different than equal protection.

The Nevada Supreme Court declined to follow the *Carter* case, and concluded:

> "After thoroughly considering this important question, we are satisfied that the better reasoned cases are those which have struck such statutes as being constitutionally infirm because they improperly grant immunity from suit to a certain class of defendants, without a reasonable basis for that classification. (Citations omitted)"

Yet, what the the Court held the Legislature could not do in *State Farm v. All Electric, Inc., supra,* that is, grant immunity to a certain class of defendants without a reasonable basis for that classification, it, itself, did the very same day, without legislative sanction, in Petitioner's case, in granting immunity to a class encompassing commercial business lessors, while virtually every other type of contractual relationship remains subject to the duty of good faith and liability for breach thereof. The mandate of the Fourteenth Amendment prohibits "States" from denying the Equal Protection of the Laws to any citizen; "States" just as effectively deny such equal protection by an unreasonable judicial classification as they do by an unreasonable legislative classification, and the result is just as devastating to the citizen who is denied the equal protection of the laws as a result thereof.

It is therefore respectfully submitted that the United States Supreme Court should grant certiorari to review the Decision of the Nevada Supreme Court to determine whether a classification giving a class of defendants immunity from civil liability without a reasonable basis for such classification violates the Fourteenth Amendment to the United States Constitution, and to clarify the confusion which has occurred among the states on this issue, as observed by the Nevada Supreme Court, as a result of the dismissal of the appeal in *Carter v. Hartenstein*, 401 U.S. 901 (1971).

II

CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER THE WITHDRAWAL OF THE COVENANT OF GOOD FAITH FROM COMMERCIAL BUSINESS LEASES IS AN IMPAIRMENT OF THE OBLIGATION OF A CONTRACT IN VIOLATION OF THE DUE PROCESS OF LAW CLAUSE OF THE FOURTEENTH AMENDMENT

U. S. Fidelity v. Peterson, 91 Nev. 617, 540 P.2d 1070 (1975) which adopted the reasoning of the California decisions (*Communale v. Traders & Gen. Ins. Co.*, 328 P.2d 198, 200 (Cal. 1958); *Gruenberg v. Aetna Ins. Co.*, 510 P. 2d 1032, 1036 (Cal. 1975)) that there is implicit in every contract a covenant of good faith and fair dealing upon which the parties to the contract may rely, and for the breach of which the non-offending party may recover consequential damages, was decided in 1975. In 1978, when the lease herein involved was entered into, the Petitioner, being a sophisticated business person and an attorney, was very much aware of the law regarding good faith and fair

dealing, and when she objected to the 90-day termination clause, she obtained the assurance of the Respondents that it was for an extremely limited purpose and would only be exercised for such purpose. She had the right to believe that the good faith of the Respondents would be measured by such assurance, and therefore the right to rely thereon as much as if it were an explicit term of the contract. It is well established that laws which are effective at the time of the making of a contract enter into and form a part of it as fully as if they had been expressly referred to or incorporated in its terms. (*Farmers and Merchants Bank v. Federal Reserve Bank,* 262 U.S. 649, 43 S.Ct. 651, 67 L.Ed. 1157, 30 A.L.R. 635; *Northern Pacific Ry. v. Wall,* 241 U.S. 87, 36 S.Ct. 493, 60 L.Ed. 905; *Warren v. United States,* 68 Ct. Cl. 634, certiorari denied, 281 U.S. 739, 50 S.Ct. 346, 74 L.Ed. 1154.)

It is therefore respectfully submitted that the covenant of good faith and fair dealing, being the law in effect at the time the Petitioner and Respondents entered into the lease contract, was a binding term of the contract, and a binding legal duty arising from the contractual relationship imposing respective obligations on the parties. Article 1, Sec. 10 of the United States Constitution prohibits any state from passing a law impairing the obligation of a contract. Although Article 1, Section 10 by its terms refers to legislative enactments, this Court has previously held that a violation of Article 1, Section 10 (by an ex post facto judicial application of a change in the law) by a Court accomplishes indirectly what is prohibited directly, and is thus a violation of the Due Process Clause of the Fourteenth Amendment. (*Bouie v. City of Columbia,* 378 U.S. 347 (1964). The

judicial withdrawal of the obligation of good faith and fair dealing in the Petitioner's case clearly impaired that obligation of the contract to Petitioner's damage. Petitioner relied on the existence of such obligation when she entered into the contract, and was entitled to do so. The impairment of that obligation by the Nevada Supreme Court resulted in Petitioner being deprived of substantial property rights, which the evidence at trial established to be a million eight hundred thousand dollars, without Due Process of Law. Petitioner respectfully submits that certiorari should be granted to review the Decision of the Nevada Supreme Court to correct this obvious and unwarranted injustice.

CONCLUSION

For the reasons set forth above, Petitioner, Nada Novakovich Aluevich, respectfully requests this Court to grant the Writ and reverse the Decision of the Nevada Supreme Court.

Respectfully this 24th day of October, 1983.

PETERSEN & PETERSEN
By /s/ Steven F. Petersen*
NADA NOVAKOVICH
NICHOLAS J. DRAKULICH
Attorneys for Petitioner

**Counsel of Record*

(Appendices follow)

Appendix A

In the Supreme Court of the State of Nevada
No. 13533

Nada Novakovich Aluevich,
Appellant,

v.

Harrah's, a Nevada Corporation;
Harrah's Club, a Nevada Corporation;
Holiday Inns, Inc., a Tennessee Corporation;
L. Mead Dixon; Lloyd Dyer; Romano Andreotti;
Maurice Sheppard; Bod Contois; and George Poore,
Respondents.

[Filed Mar. 31, 1983]

Opinion

By the Court, Manoukian, C. J.:

This appeal concerns the scope of an implied covenant of good faith and fair dealing. Finding that courts have not extended such a covenant to commercial leases between two sophisticated parties who are not otherwise bound by any special element of reliance or fiduciary duties, we affirm the directed verdict dismissing appellant's claim for tortious breach of an implied duty of good faith and fair dealing.

Appellant is a Reno attorney who, from 1968 to 1978, operated Luke's Gift Shoppe and Luke's Nevada Photo Service at the northwest corner of Second and Virginia Streets on the ground floor of the Byington Building. Appellant occupied that building under a succession of subleases from Harrah's Club. Since 1968, all of the subleases

between appellant and Harrah's Club have contained a provision which granted Harrah's Club "the option to cancel this lease upon ninety (90) day's written notice to [appellant]." Appellant now claims that throughout all lease negotiations, the respondents orally assured her that the ninety day termination privilege would not be exercised unless she operated unrestricted or unlimited gaming in the gift shop or the shop became cluttered with too much merchandise. None of those restrictions, however, appeared in any of the written lease agreements; the termination privilege contained in all of the subleases was absolutely unqualified.

On October 2, 1978, pursuant to the termination privilege contained in the 1978 sublease, Harrah's served notice on appellant of its intention to cancel the sublease. The effective date of cancellation was January 1, 1979, but Harrah's granted an extension until February 29, 1979. Appellant vacated the premises on that date. Following the cancellation, appellant filed a complaint which alleged numerous claims for relief. Because all other claims are meritless, we shall address only appellant's contentions regarding the tort action for breach of an implied duty of good faith and fair dealing.

The court below held that no genuine issue as to any material fact existed regarding the "bad faith" claim and granted a directed verdict, pursuant to NRCP 50(a), in respondents' favor. Appellant argues that the lower court's ruling was erroneous, in that, evidence was presented which showed that respondents terminated the 1978 sublease to usurp a profitable business that she had operated on the demised premises for several years.

In U. S. Fidelity v. Petersen, 91 Nev. 617, 540 P.2d 1070 (1975), this court recognized a cause of action in tort for the breach of an implied covenant of good faith and fair dealing where an insurer fails to deal fairly and in good faith with its insured by refusing, without proper cause, to compensate its insured for a loss covered by the policy. *Id.* at 620, 540 P.2d at 1071. Appellant requests this court extend such a cause of action to her case. The tort recognized in *Petersen*, however, arose out of a need for special protection of insureds in light of the quasi-public nature of the insurance industry and the element of an insured's heavy reliance upon the insurer's credibility. *See* Comment, *The New Tort of Bad Faith Breach of Contract: Christian v. American Home Assurance Corp.*, 13 Tulsa L. J. 605, 613-616 (1977-78). The dissent correctly notes that an implied covenant of good faith and fair dealing has mainly been implied in contractual relations which involve a special element of reliance such as that found in partnership, insurance and franchise agreements. The case relied on by the dissent concerned a situation where one party has traditionally held vastly superior bargaining power—the termination of a salesperson's "at will" employment contract. Fortune v. National Cash Register Co., 364 N.E.2d 1251, 1253 (Mass. 1977).

In the present case, the appellant is an experienced businessperson and an attorney. The unqualified termination privilege was the subject of negotiations for ten years. Although the cancellation privilege remained unqualified, appellant continued to renew the subleases. The relationship between appellant and respondent was that of lessee and lessor. We do not find, in the present case, the special

element of reliance which prompted this court in *Petersen* to recognize a cause of action in tort for the breach of an implied covenant of good faith and fair dealing.

We have considered the remaining assignments of error and find them to be without merit. Therefore, the lower court's involuntary dismissal and directed verdict and the jury's verdict in respondents' favor are affirmed.

/s/ MANOUKIAN, C. J.
Manoukian

We concur:

/s/ MOWBRAY, J.
Mowbray

/s/ STEFFEN, J.
Steffen

/s/ ZENOFF, SR., J.[1]
Zenoff

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[1]The Honorable David Zenoff, Senior Justice, was assigned to participate in this case by the Chief Justice, pursuant to Nev. Const. Art. 6, § 19.

SPRINGER, J., dissenting:

There is evidence in this record that respondents, Harrah's, Harrah's Club and Holiday Inns, Inc. did not act in good faith in performance and enforcement of the March 1, 1978, lease agreement. I would remand this case to the trial court for jury consideration of appellant's claim for breach of implied covenant of good faith and fair dealing.

Because we are reviewing a verdict granted pursuant to NRCP 50(a), we must view the evidence and all inferences in the light most favorable to the party against whom the motion was made. Connell v. Carl's Air Conditioning, 97 Nev. 436, 438, 634 P.2d 673 (1981); Drummond v. Mid West Growers, 91 Nev. 698, 542 P.2d 198 (1975).

Since 1968, Aluevich operated a gift shop and photography business under a succession of subleases from Harrah's. All of the leases before 1978 provided for a flat monthly rental fee to be paid by Aluevich. On June 30, 1977, Aluevich notified Harrah's of her intention to renew the 1973 lease. During lease renewal negotiations Harrah's disclosed that it was considering establishing its own gift shop business on the premises and requested sales data from Aluevich. Aluevich refused to provide this information. Aluevich introduced at trial a Harrah's memorandum, circulated before the execution of the 1978 renewal, in which mention was made of a recommendation to "take over this operation when the lease expires in February, 1978." Another pre-lease memorandum in the record refers to the "profit potential from operating Luke's Gift Shoppe as a Harrah's entity."

Aluevich claims that to obtain the gross and the net sales figures of her business, Harrah's proposed the negotiation of a percentage lease in which these figures would neces-

sarily have to be disclosed. Aluevich accepted this proposal. The lease as renewed provided for rental on a percentage basis and for disclosure of profit figures. It also contained a provision which permitted Harrah's to terminate the lease on 90 days' notice to Aluevich. According to Aluevich, however, agents of Harrah's told her that the termination right would be exercised only if Aluevich were to put gaming into the lease premises or if the premises were allowed to become cluttered or unkempt.

After the renewal in March of 1978, Harrah's continued to move toward takeover by making projections of anticipated profits from a proposed Harrah's operation in the subject area. Harrah's admitted it had, prior to termination, projected an annual pre-tax profit of $800,000 by operation of a business similar to that of Aluevich. Harrah's also admitted that Aluevich's lease was terminated because Harrah's earnings and projected earnings were falling. Lloyd Dyer, president of Harrah's in 1978, testified that Aluevich was a good tenant and ran a good store.

Seven months after execution of the lease and after Aluevich had disclosed the closely guarded profit and income figures, Harrah's gave termination notice under the 90-day clause. Respondents have not alleged that Aluevich defaulted on any of the provisions of the lease. Aluevich vacated pursuant to the notice and Harrah's proceeded, as it had previously indicated, to conduct a retail business in the subject premises.

In sum, Aluevich's position is that a jury could have reasonably inferred that Harrah's did not deal fairly with Aluevich in that it had no intention of allowing Aluevich to remain on the premises for the duration of the lease term but rather that its intention was to obtain Aluevich's busi-

ness figures and then take over the business at an early and convenient date.

Harrah's position is not that Aluevich has failed to present a case which would, if believed, form the basis for a bad faith action against Harrah's. Rather, Harrah's argues that an action for breach of an implied duty of good faith and fair dealing will lie only with relation to insurance and franchise contracts. Also, Harrah's contends that the parol evidence rule prohibits consideration of any oral representations regarding termination to Aluevich's lease which contradict the clear meaning of the unqualified termination clause.

Although many of the cases which recognize an implied covenant of good faith and fair dealing involve insurance and franchise contracts, I see no reason to restrict actions arising therefrom to these kinds of contracts. In U.S. Fidelity v. Peterson, 91 Nev. 617, 540 P.2d 1070 (1975), this court imposed a duty on insurers to deal fairly and in good faith with their insureds. That duty arose from the premise that an implied covenant of good faith and fair dealing exists in *every* contract, that neither party should be permitted to do anything which will injure the right of the other to receive the benefits of the agreement. *See* Silberg v. California Life Insurance Co., 521 P.2d 1103, 1108 (Cal. 1974); Gruenberg v. Aetna Ins. Co., 510 P.2d 1032, 1036 (Cal. 1975); Communale v. Traders & Gen. Ins. Co., 328 P.2d 198, 200 (Cal. 1958). In Mitchell v. Bailey & Selover, 96 Nev. 147, 605 P.2d 1138 (1980), this court applied the obligation of good faith and fair dealing contained in the U.C.C., *see* NRS 104.1203, to the enforcement of a warehouseman's lien. Under these rulings it is indeed difficult to maintain such a restricted approach to bad faith actions

as is taken by the majority. *See* Restatement (Second) of Contracts § 205 (1981).

A leading example of recognition of this type of action may be found in Fortune v. National Cash Register Company, 364 N.E.2d 1251 (Mass. 1977), in which it was held that although a salesman's employment contract was terminable at will, there was still an independent action for breach of the implied obligation of good faith where the salesman was found to have been discharged in order to avoid payment of a bonus. In *Fortune* the salesman's employment was terminated shortly after his company received a $5,000,000 order from his territory. The jury found that the defendant acted in bad faith when it terminated the salesman's employment and awarded damages. The Supreme Judicial Court of Massachusetts upheld the jury verdict, recognizing the general right of an employer to terminate "at will" but also recognizing an independent breach of contract action because the "parties to contracts and commercial transaction must act in good faith toward each other." This holding is buttressed by Professor Summer's observation that when parties agree to an "at will" termination power, they usually agree merely to the grant of a power and not also to the grant of a power to abuse that power. R. Summers, *"Good Faith" in General Contract Law and the Sales Provisions of the Uniform Commercial Code,* 54 Va.L.Rev. 195, 197-98 (1968).

In deciding this case it is not necessary to pronounce any general rules as to when and under what contractual circumstances an action for breach of the duty of good faith and fair dealing would lie. In contract law, good faith is an "excluder." "It is a phrase without general meaning of its own and serves to exclude a wide range of hetero-

geneous forms of bad faith. In a particular context the phrase takes on a specific meaning, but usually this is only by way of contrast with the specific form of bad faith actually or hypothetically ruled out." *Id.* at 201. "Good faith, then, takes on specific and variant meanings by way of contrast with the specific and variant forms of bad faith which, [based on the law's standard of fairness which all people ought to observe in their dealings with each other], judges decide to prohibit." *Id.* at 202-04. I would hold only that in this case a jury would be justified, if it accepted the position of Aluevich, in finding that there was an obligation of good faith and fair dealing imposed on Harrah's in the performance and enforcement of the subject lease contract, that Harrah's breached that obligation, and that Harrah's was responsible for damages resulting from such breach. *Cf. Fortune,* 364 N.E.2d at 1257.

With regard to Harrah's contention that parol evidence cannot be used to contradict the clear terms of the termination clause, I would simply say that the evidence outlined above is offered for the purpose of supporting an independent action for violation of the implied covenant or obligation of good faith. Such evidence does not serve to cancel or alter the termination privilege. Assuming an unqualified right on the part of Harrah's to terminate the lease, the question remains as to whether the conduct complained of, if believed by a jury, would support an action for damages against Harrah's for violation of the implied covenant of good faith and fair dealing. I believe it does and would reverse on this issue and remand for trial.

/s/ SPRINGER, J.
Springer

Appendix B

In the Supreme Court of the State of Nevada
No. 13533

Nada Novakovich Aluevich,
Appellant

vs.

Harrah's, a Nevada corporation; Harrah's Club, a Nevada corporation; Holiday Inns, Inc., a Tennessee corporation; L. Mead Dixon; Lloyd Dyer; Romano Andreotti; Maurice Sheppard; Bob Contois; and George Poore,
Respondents

[Filed April 15, 1983]

Petition for Rehearing

Comes now the Appellant, Nada Novakovich Aluevich, and hereby petitions this Court to grant a rehearing on the above-entitled appeal pursuant to the provisions of Rule 40, Nevada Rules of Appellate Procedure, upon the grounds that the opinion of this Court as rendered on March 31, 1983, misapprehends material points of law pertinent to the scope, purpose and applicability of the covenant of good faith and fair dealing which results in an unjustifiable extinguishment of a remedy to a limited class of litigants. This petition is made upon the further ground that rehearing under circumstances herein presented will promote substantial justice. (N.R.A.P., Rule 40(c)(iii))

This Petition for Renearing is based upon the Record on Appeal on file herein, the Decision of this Court ren-

dered on March 31, 1983, and the points and authorities submitted herewith in support of this petition.

Dated this 14th day of April, 1983.

Respectfully submitted

/s/ Nicholas J. Drakulich
and
/s/ Nada Novakovich
Attorneys for Appellant

In the Supreme Court of the State of Nevada
No. 13533

Nada Novakovich Aluevich,
Appellant,

v.

Harrah's, a Nevada Corporation;
Harrah's Club, a Nevada Corporation;
Holiday Inns, Inc., a Tennessee Corporation;
L. Mead Dixon; Lloyd Dyer; Romano Andreotti;
Maurice Sheppard; Bob Contois; and George Poore,
Respondents.

Points and Authorities in Support of Petition for Rehearing

Comes Now the Appellant, Nada Novakovich Aluevich, and hereby submits the following points and authorities in support of the grounds stated in her Petition for a Rehearing in the above-entitled appeal:

A. Rehearing Should Be Granted Because This Court's Opinion Misapprehends Material Points of Law Pertinent to the Scope, Purpose and Applicability of the Covenant of Good Faith and Fair Dealing.

The opinion of this Court affirming the orders and judgment of the Trial Court which were appealed from is premised upon the determination, stated in the opinion, that:

> "Finding that courts have not extended such a covenant to commercial leases between two sophisticated parties who are not otherwise bound by any special element of reliance or fiduciary duties, we affirm the directed verdict dismissing appellant's claim for tor-

tious breach of an implied duty of good faith and fair dealing."

The Court's opinion thereafter points out that the lease which is the subject matter of this litigation contained an "at will" termination clause in favor of the Lessor, which clause was the subject negotiations for ten (10) years between the Respondents and the Appellant, who is an experienced business person and an attorney at law. Indicating that it did not find in this case "the special element of reliance" which prompted the Court in *United States v. Peterson,* 91 Nev. 617, 540 P.2d 1070 (1975) to recognize a cause of action in tort for breach of an implied covenant of good faith and fair dealing, this Court held that no such cause of action would lie in favor of Appellant herein.

It is respectfully submitted that this holding misperceives and misapprehends the nature of the covenant of good faith and fair dealing, and the public policy and purpose it is intended to serve, and the result is the imposition of substantial injustice upon Appellant.

The implied covenant of good faith and fair dealing is a duty imposed by law which arises out of a contractual relationship between the parties. As the California Supreme Court noted in *Tameny v. Atlantic Richfield Co.,* 27 Cal.3d 167, 164 Cal.Rptr. 839, a breach of a promise in a contract gives rise to an action *ex contractu,* whereas the breach of a legal duty which arises because of the contract relationship gives rise to an action *ex delicto.* The implied covenant of good faith and fair dealing gives rise to a legal duty, and therefore the breach thereof is a tort, notwithstanding that the relationship which creates that duty arises from a contractual relationship. This was precisely the

holding of this Court in *United States Fidelity v. Peterson*, supra, citing with approval *Silberg v. California Life Insurance Co.*, 521 P.2d 1103, 1108 (Cal. 1974); *Gruenberg v. Aetna Insurance Co.*, 510 P.2d 1032, 1036 (Cal. 1975) and *Communale v. Traders & General Insurance Co.*, 328 P.2d 198 (Cal. 1958).

The suggestion in this Court's opinion that such legal duty extends only to unsophisticated, unknowledgable and dependent persons, and that the protection thereof should be withheld from sophisticated business people and attorneys not bound by a special element of reliance is inconsistent with the stated public policy of this State and the purpose of the legal duty in the first instance. The Legislature, in the Uniform Commercial Code, has recognized that sophisticated, knowledgable business people, with experience and skill in commercial transactions, should be bound to and entitled to rely upon the legal duty of good faith and fair dealing. N.R.S. 104.2104 defines "merchants" as having such qualities of knowledge, experience and skill. N.R.S. 104.1203 provides:

> "Every contract or duty within this chapter (the entire Uniform Commercial Code) imposes an obligation of good faith in its performance or enforcement."

The Legislature defines "good faith" in N.R.S. 104.1201(19) as "honesty in fact in the conduct or transaction concerned", and then provides that sophisticated, knowledgable and experienced business people as well as others may not bargain away the obligation of "good faith". (N.R.S. 104.1102(3). The Legislature has further provided that when one of the parties to a transaction has a right which is exercisable "at will", such right shall be construed

to mean that he has the power to do so "only if he in good faith believes" its exercise is appropriate under the circumstances. Thus, under the Nevada statutory law, every contract or transaction between persons, whether sophisticated, knowledgable and experienced, or not, which involves the sale of goods, (N.R.S. 104.2101 et seq.) commercial paper, (N.R.S. 104.3101 et seq.) bank deposits and collections, (N.R.S. 104.4101 et seq.) letters of credit, (N.R.S. 104.5101 et seq.) bulk transfers (N.R.S. 104.6101 et seq.) warehouse receipts, bills of lading and documents of title (N.R.S. 104.7101 et seq.) investment securities (N.R.S. 104.8101 et seq.) and secured transactions (N.R.S. 104.9101 et seq.) gives rise to the breach of a legal duty of good faith and fair dealing. Even leases which are deemed to be security devices would give rise to such a duty. (*Cf. U.C. Leasing, Inc. v. Laughlin*, 96 Nev. 157, 606 P.2d 167 (1980) which holds such leases to be subject to the Uniform Commercial Code). The effect of the decision in the case at bar is to withhold the protection of such law only from commercial leases and transactions involving real property which are not otherwise subject to the provisions of the Uniform Commercial Code. Ironically if the Appellant had accepted the Respondents' offer to acquire her inventory upon her being required to vacate the premises, such transaction would have been subject to the covenant of good faith and fair dealing, notwithstanding the experience and knowledge of the Appellant, since it would have been governed by N.R.S. 104.6101 et seq. as a "bulk transfer".

The resulting anomaly cannot be justified by reason or logic, particularly on the premise stated in this Court's opinion, that the business sophistication and experience of

the Appellant disentitles her in some way to the protection of the law applicable to all other contracts. It is precisely because she was a knowledgable and experienced business person and attorney that she acted in reliance on the implied covenant of good faith and fair dealing. It is clear from the record that despite her experience as a business person and the fact she is an attorney that she was not in an equal arms-length bargaining position with Respondents at the time of the renewal of the lease in 1978. She was in the position of trying to save a business which had been built by herself and her deceased husband over many years, and with building blocks comprised of an immeasurable amount of personal time, effort, money, toil and emotion. She objected strenuously to the "at will" termination clause, but the Respondents, because of their business strength, were in a position to tell her to "take it or leave it". Because she was a good business person and a knowledgable attorney, she was aware that under the law of this State there was an implied covenant of good faith and fair dealing in every contract, the breach of which would be a tort for which she would have a remedy in damages, pursuant to this Court's decision in *United States Fidelity v. Peterson, supra.* Because she was a merchant, she was familiar with the provisions of the Uniform Commercial Code pertaining to "good faith" and had no reason to believe, in the light of the *Peterson* decision, that she could not rely on the similar duty recognized in *Peterson* as applicable to *every* contract. She thus protected herself as far as she could against an abuse of power created by the "at will" termination clause by obtaining assurances from the Respondent that such power would only be exercised under specific described situations, i.e. if Appellant

were a bad tenant or if the space became usable for unlimited gaming. In reliance on these assurances she renewed the lease with the "at will" termination clause, and agreed to a percentage lease which gave Harrah's access to her previously carefully guarded gross sales information. To hold now that she was not entitled to rely upon the Respondents' obligation to be "honest in fact" results in an unfair and unjust deprivation of the protection of the law to which the Appellant had every right to believe she was entitled.

B. REHEARING SHOULD BE GRANTED TO PREVENT AN UNCONSTITUTIONAL DEPRIVATION OF THE EQUAL PROTECTION OF THE LAW AND OF DUE PROCESS OF LAW

As noted above, the net effect of this Court's decision in the case at bar is to hold that the implied covenant of good faith and fair dealing, and the tort remedy for the enforcement thereof, is available to those persons who purchase insurance contracts, enter into franchise agreements or otherwise contract for fiduciary obligations, or who engage in commercial and business transactions not involving leases or transfers of real property. All such persons will be entitled to rely upon the "honesty in fact" of the persons and entities with whom they deal; only transactions not within the Uniform Commercial Code or involving insurance or similar contracts will be left without a right to the performance of the implied covenant of good faith and fair dealing. It is respectfully submitted that this classification is arbitrary and unjustifiable. The same day this case was decided, this Court decided *State Farm Fire and Casualty Company v. All Electric, Inc.*, No. 13228, Nev. Adv. Op. No. 49 (3/31/83) in which it held that

a legislative discrimination between classifications of allegedly responsible persons was a violation of the Equal Protection Clause of the Nevada Constitution as well as the federal Constitution. In that case, the Court considered the effect of N.R.S. 11.205 which immunized contractors and architects from liability for design and construction defects after six (6) years but left owners and material suppliers liable. In holding such statute unconstitutional, this Court said:

> "Legislative classifications must apply uniformly to all who are similarly situated, and the distinctions which separate those who are included within a classification from those who are not must be reasonable, not arbitrary . . ."

It is respectfully submitted that the singling out of commercial tenants to exclude them from the protection of the legal duty arising from the implied covenant of good faith and fair dealing, while leaving all other sophisticated, knowledgable and experienced business people subject to such legal duty, is no more reasonable nor justifiable than the singling out of architects and contractors for protection while leaving owners and suppliers liable. To deny to the Appellant the protection of the law which is extended to virtually everyone else similarly situated is an unconstitutional denial of the equal protection of the laws, in violation of both the Federal Constitution, Amendment 14, and the State Constitution. The fact that this denial was accomplished judicially rather than legislatively does not affect the unconstitutionality of the result, since it is a denial of due process of law for a Court to accomplish indirectly what the Legislature is constitutionally precluded from accomplishing directly. (*Cf. Bouie v. City of Columbia,* 378 U.S. 347 (1964).

It is respectfully submitted that it was not the intention of this Court in the rendition of its decision herein to deny to the Appellant the protection of the law extended to virtually everyone else, but rather than such result was accomplished by the misapprehension of the scope of the implied covenant of good faith, and the fact that the stated public policy of this State already extended such obligation by legislation to commercial transactions between knowledgable and sophisticated businessmen. As a result the exclusion of the limited class of people to which Appellant belongs which is the class of people who enter into commercial contracts not governed by the Uniform Commercial Code, the insurance law, franchise law, the law of fiduciary duty or the law of employment becomes arbitrary and unreasonable. It is therefore submitted that rehearing should be granted to consider the effect of such limited exclusion in light of the remaider of Nevada statutory and case law pertaining to the implied covenant of good faith and fair dealing.

C. REHEARING SHOULD BE GRANTED TO ACCOMPLISH SUBSTANTIAL JUSTICE UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE.

As noted above, at the time the renewal of the lease herein involved was effected, the Appellant justifiably relied on the recognition of a cause of action to enforce in tort the implied obligation of good faith and fair dealing. It is axiomatic that contracts are entered into with reference to the controlling laws that affect them at the time they are entered into. (*Cf. Stevens v. First National Bank*, 65 Nev. 352, 196 P.2d 756 (1948)). Such laws enter into the

contract as fully as if specifically incorporated therein or referred to by the contract. Thus, the Appellant's contract containing an "at will" termination clause was, at the time it was entered into, modified by the requirement that the power created thereby be exercised in good faith and not abused. It is respectfully submitted that the issue presented herein was not whether the implied covenant of good faith should be *extended* to the type of contract herein involved; the broad language of the Peterson case and the cases on which it relied, as well as the public policy enunciated in the Uniform Commercial Code clearly indicated that such duty extended to *every* contract. The issue is whether such duty should be withdrawn from contracts to which it otherwise apparently applied. It is submitted that the withdrawal of such duty from contracts involving commercial leases effects a substantial injustice, particularly to a contracting party who, because of her experience, skill, knowledge and professional expertise, had every reason to rely upon such protection from an odious termination clause which she did not have the power to bargain away.

In *Seaman's Direct Buying Service, Inc. v. Standard Oil of California, Inc.*, 181 Cal.Rptr. 126 (Cal.App. 1982), the Court also suggested that there was an "unwillingness on the part of the Supreme Court to expand the law allowing recovery in tort", and therefore did not allow such recovery. The California Supreme Court has granted a hearing on that case, presumably to clarify for the State of California the scope of the remedy in tort for breach of an implied covenant of good faith and fair dealing. Inasmuch as Nevada's adoption of a tort remedy for breach of such covenant was adopted from the California judicial decisions which recognized such cause of action and remedy in the

first instance, (*United States Fidelity v. Peterson, supra,* and cases therein cited) it is respectfully suggested that the decision to be rendered in *Seaman's* may prove instructive and helpful on the issue which is presented herein, and that rehearing should be granted so that the California determination in Seaman's can be reviewed and considered in ruling upon the merits of the issues herein presented by this petition.

In summary, it is respectfully submitted that rehearing should be granted to correct the substantial injustice which has resulted by reason of the Appellant's having been deprived of a right and remedy which she relied upon in entering into the lease renewal with the Respondent. In addition, rehearing should be granted to remedy the apparent unconstitutional denial of equal protection of the laws and due process of law which has resulted from the effect of such Decision, which denies to a limited class of people the protection of the law imposing a duty of good faith and fair dealing upon all persons who enter into contractual relationships with others.

CONCLUSION

WHEREFORE, Appellant prays that this Petition for Rehearing be granted.

DATED this 14th day of April, 1983.

Respectfully submitted

/s/ Nicholas J. Drakulich
and
/s/ Nada Novakovich
Attorneys for Appellant

Appendix C

In the Supreme Court of the State of Nevada
No. 13533

Nada Novakovich Aluevich,
Appellant,

vs.

Harrah's or Harrah's Club, a Nevada Corporation; L. Mead Dixon, Lloyd Dyer; Romano Andreotti; Maurice Sheppard; Bob Contois and George Poore,
Respondents.

[Filed July 29, 1983]

Order Denying Rehearing

Rehearing denied. NRAP 40(c).

It is so ORDERED.

/s/ Manoukian, C.J.
/s/ Springer, J.
/s/ Mowbray, J.
/s/ Steffen, J.
/s/ Zenoff, Sr. J.[1]

cc: Nada Novakovich
Nicholas J. Drakulich
Vargas & Bartlett
Alfred F. Pagni

[1]The Honorable David Zenoff, Senior Justice, was assigned to participate in this case by the Chief Justice, pursuant to Nev. Const. Art. 6, § 19.

Appendix D

In the Supreme Court of the State of Nevada

Clerk's Certificate

State of Nevada, ss.

I, C. R. Davenport, the duly appointed and qualified Clerk of the Supreme Court of said State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in the matter of Aluevich v. Harrah's, et al., No. 13533.

Judgment

The Court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, to the effect: ". . . affirmed."

Judgment, as quoted above, entered this 31st day of March, 1983.

Judgment

The Court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, to the effect" "Rehearing denied."

Judgment, as quoted above, entered this 29th day of July, 1983.

In witness whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, at my office in Carson City, Nevada, this 8th day of August, 1983.

C. R. Davenport
Clerk of Supreme Court
of the State of Nevada

By Judith Fountain
Deputy